IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

KENNETH GREEN 201 West 93rd Street, Apt. 7A New York, NY 10025 Plaintiff, v. NYU LANGONE HEALTH SYSTEM, d/b/a NYU LANGONE MEDICAL CENTER 550 First Avenue New York, NY 10016 and NYU LANGONE HOSPITALS, d/b/a NYU LANGONE MEDICAL CENTER 550 First Avenue New York, NY 10016 Defendants.	CIVIL ACTION No.: **JURY TRIAL DEMANDED**

CIVIL ACTION COMPLAINT

Plaintiff, Kenneth Green (*hereinafter* referred to as "Plaintiff," unless indicated otherwise), by and through his undersigned counsel, hereby avers as follows:

INTRODUCTION

1. This action has been initiated by Plaintiff against Defendants for violations of the Americans with Disabilities Act ("ADA" – 42 U.S.C. §§ 12101, *et. seq.*), the New York State Human Rights Law ("HRL" - N.Y. Exec. Law §§ 290 *et. seq.*) and the New York City Human Rights Law, N.Y.C. Admin. Code ("NYCHRL"). As a direct consequence of Defendants' unlawful actions, Plaintiff seeks damages as set forth herein.

JURISDICTION AND VENUE

2. This Court has original subject matter jurisdiction over the instant action pursuant to 28 U.S.C. §§ 1331 and 1343(a)(4) because it arises under the laws of the United States and seeks redress for violations of federal laws. There lies supplemental jurisdiction over Plaintiff's state and city-law claims because they arise out of the same common nucleus of operative facts as Plaintiff's federal claims asserted herein.

3. This Court may properly maintain personal jurisdiction over Defendants because their contacts with this state and this judicial district are sufficient for the exercise of jurisdiction over Defendants to comply with traditional notions of fair play and substantial justice, satisfying the standard set forth by the United States Supreme Court in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945) and its progeny.

4. Pursuant to 28 U.S.C. §§ 1391(b)(1) and (b)(2), venue is properly laid in this district because substantially all of the acts and/or omissions giving rise to the claims set forth herein occurred in this judicial district, and Defendants are deemed to reside where they are subject to personal jurisdiction, rendering Defendants residents of the Southern District of New York.

5. Plaintiff is proceeding herein under the ADA and has properly exhausted his administrative remedies with respect to such claims by timely filing a Charge with the Equal Employment Opportunity Commission ("EEOC") and by filing the instant lawsuit within ninety (90) days of receiving a notice of dismissal and/or right to sue letter from the EEOC.

PARTIES

6. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

7. Plaintiff is an adult individual, with an address as set forth in the above-caption.

8. Defendant NYU Langone Hospitals ("Defendant Hospitals" where referred to individually) and Defendant Langone Health System ("Defendant System where referred to individually) jointly operate numerous medical facilities and hospitals throughout the greater New York City metropolitan. They upon information and belief jointly operated, oversaw and managed the facility wherein Plaintiff was physically employed as his single, joint and/or integrated employer at 550 First Avenue, New York, NY 10016 (operating publicly as NYU Langone Medical Center).

9. At all times relevant herein, Defendants acted by and through their agents, servants and employees, each of whom acted at all times relevant herein in the course and scope of their employment with and for Defendants.

FACTUAL BACKGROUND

10. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

11. Plaintiff is a 54-year-old male.

12. Plaintiff was hired by Defendants in or about early April of 2016, and in total, was employed with Defendants for approximately 4 months.

13. Plaintiff physically worked for Defendants at NYU Langone Medical Center, located at 550 First Avenue, New York, NY 10016.

14. Plaintiff was employed by Defendants as a part-time housekeeper working up to and approximately 20 hours per week.

15. At all times relevant during Plaintiff's limited period of employment with Defendants, Plaintiff was supervised by one Raynel Gomez ("Gomez"). Plaintiff was indirectly supervised by one Hilda Pineda-Lopez, a Director for Defendant.

16. Plaintiff has a history and continues to suffer from disabilities, including but not limited to the following: arthritis, sciatica, other degenerative back problems, hypertension – and in addition – has a history of suffering from neurological problems (including Transient Ischemic Attacks, a/k/a "mini stroke(s)"). These are long-term and permanent medical conditions based upon available information, testing, and medical data.

17. During Plaintiff's short tenure with Defendants, he was considered to work within Defendants' probationary period. Although Plaintiff's medical conditions at times limited and impacted his life activities (i.e. working, performance of manual tasks, neurological functions, and circulatory functions (among others)), Plaintiff was fully able to perform his job duties for Defendants.

18. Plaintiff was terminated by Gomez in writing for "Failure To Pass Probationary Period – Due to Substandard Attendance." More specifically, Gomez documented that Plaintiff was terminated expressly and solely for missing "a total of 11 days."

19. Plaintiff does not dispute missing several days during his probationary period, but instead contends herein he was specifically denied reasonable accommodations to treat for his disabilities and health problems and retaliated against for seeking such accommodations through termination.

20. Accommodating Plaintiff for medical absenteeism was an exceedingly reasonable accommodation, as:

(a) Permitting someone to take time off for days or months from work is a well-established medical accommodation, and same was reasonable within Defendants' workplace;[1]

(b) Defendants provide many non-probationary similarly situated employees up to 12 weeks of medical leave per year (or more) under the FMLA demonstrating the ease and undue burden upon which employees can be accommodated for intermittent, periodic or block medical leaves;[2] and

(c) Plaintiff was not some highly technical, nationally renowned surgeon whose absence from planned surgeries was detrimental or life threatening to patients. Plaintiff worked *in an entry-level, highly redundant job role* performing general cleaning for Defendants were absences of such employees were commonplace.

21. Plaintiff's missed time from work for which he was terminated consisting predominantly of time required off for medical reasons, time off that should have been considered reasonable accommodations.

22. Plaintiff disclosed his health conditions to his immediate management; but exhibiting complete disdain for Plaintiff missing anytime off from work, Plaintiff nonetheless was refused permission to take certain days off to attend medical appointments and had the balance of time that was necessary to miss for medical reasons counted against him for purposes of termination (without the opportunity of any dialogue of an interactive process).

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[1] Courts throughout the United States uniformly hold that medical leave may be a reasonable accommodation under the ADA or other anti-discrimination law(s). *See e.g. Garcia-Ayala v. Lederle Parenterals, Inc.* 212 F.3d 638, 648-50 (1st Cir. 2000); *Graves v. Finch Pruyn & Co., Inc.*, 457 F.3d 181, 185 & n.5 (2d Cir. 2006); *Walton v. Mental Health Ass'n of Southeastern Pa.*, 168 F.3d 61, 671 (3d Cir. 1999); *Myers v. Hose*, 50 F.3d 278 (4th Cir. 1995)(rejecting unaccrued paid leave as a reasonable accommodation, but citing with approval the EEOC Interpretive Guidance regarding unpaid leave and accrued paid leaves as reasonable accommodations); *Cehrs v. Ne. Ohio Alzheimer's Research Ctr.*, 155 F.3d 775, 781-83 (6th Cir. 1998); *Haschmann v. Time Warner Ent Co.*, 151 F.3d 591, 601 (7th Cir. 1998); *Browning v. Liberty Mut. Ins. Co.*, 178 F.3d 1043, 1049 n.3 (8th Cir. 1999); *Nunes v. Wal-Mart Stores, Inc.*, 164 F.3d 1243, 1247 (9th Cir. 1999); *Smith v. Diffee Ford-Lincoln-Mercury, Inc.*, 298 F.3d 955, 967 (10th Cir. 2002); *Holly v. Clairson Indus*, LLC,492 F.3d 1247, 1263 (11th Cir. 2007).

[2] Employment for days, weeks, month or over a year should not dictate whether an employee can be reasonably accommodated by having to miss some sporadic days for hospitalization or medical treatment.

23. By way of examples of notice to Defendants, Plaintiff provided medical notes and documentation to Defendants' management, disclosed his health problems verbally and Plaintiff disclosed or verified medical treatment or hospitalization for days missed (ultimately resulting in his termination from employment).

Count I
Americans with Disabilities Act ("ADA")
(Discrimination & Retaliation)

24. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

25. Plaintiff seeks relief herein because:

(a) He was not accommodated by permitting him to miss days from work for disclosed health problems and disabilities and had same counted against him for purposes of termination;

(b) He was terminated due to his actual, record-of and perceived health problems; and

(c) He was also terminated in retaliation due to his requested accommodations and expressed concerns that he was being denied time off for medical reasons (opposition to discriminatory treatment).

26. The aforesaid actions constitute unlawful retaliation and discrimination under the ADA.

Count II
New York City Human Rights Law, N.Y.C. Admin. Code ("NYCHRL")
(Discrimination & Retaliation)

27. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

28. Plaintiff re-asserts and re-alleges each and every allegation as set forth in Count I, *supra*, as they also constitute identical violations of the NYCHRL.

29. These actions as aforesaid constitute violations of the NYCHRL.

Count III
Violations the New York State Human Rights Law ("HRL" - N.Y. Exec. Law §§ 290 *et.*)
(Discrimination & Retaliation)

30. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

31. Plaintiff re-asserts and re-alleges each and every allegation as set forth in Counts I and II, *supra*, as they also constitute identical violations of the HRL.

WHEREFORE, Plaintiff prays that this Court enter an Order providing that:

A. Defendants are to compensate Plaintiff, reimburse Plaintiff, and make Plaintiff whole for any and all pay and benefits Plaintiff would have received had it not been for Defendants' illegal actions, including but not limited to back pay, front pay, salary, pay increases, bonuses, insurance, benefits, training, promotions, reinstatement, and seniority.

B. Plaintiff is to be awarded punitive and/or liquidated damages, as permitted by applicable law, in an amount believed by the Court or trier of fact to be appropriate to punish Defendants for their willful, deliberate, malicious and outrageous conduct and to deter Defendants or other employers from engaging in such misconduct in the future;

C. Plaintiff is to be accorded other equitable and legal relief as the Court deems just, proper, and appropriate (including but not limited to damages for emotional distress / pain and suffering);

D. Plaintiff is to be awarded the costs and expenses of this action and reasonable attorney's fees as provided by applicable federal and state law;

E. Any verdict in favor of Plaintiff is to be molded by the Court to maximize the financial recovery available to Plaintiff in light of the caps on certain damages set forth in applicable law;

F. Plaintiff's claims are to receive a trial by jury to the extent allowed by applicable law. Plaintiff has also endorsed this demand on the caption of this Complaint in accordance with Federal Rule of Civil Procedure 38(b).

Respectfully submitted,

KARPF, KARPF & CERUTTI, P.C.

By: ______________________

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Dated: July 18, 2017